

DESCRIPTION OF PILOT ADR REFERRAL PROGRAM FOR THE INTERIOR BOARD OF LAND APPEALS (IBLA)

- Docketing & Intake Process

When an appeal is filed, IBLA docketes the case and sends a docketing letter to the parties. IBLA will include with the docketing letter an ADR referral data sheet, which will provide the parties with general information about ADR. If any party is interested in pursuing ADR, its representative may contact the OHA Dispute Resolution Specialist for additional information and assistance.

- Review for ADR Suitability

Even if the parties do not initiate an ADR process on their own, IBLA may contact the parties regarding ADR. After the case has been docketed, the Chief Administrative Judge and the OHA Dispute Resolution Specialist will evaluate the appeal for its suitability for ADR.

- If, based on their review, the Chief Administrative Judge and OHA Dispute Resolution Specialist do not think that the case should be referred for either direct negotiation or another form of ADR (such as assisted negotiation), the case will be assigned to a panel of Administrative Judges for adjudication pursuant to IBLA's normal decision-making process.
- If they determine that the case may be suitable for ADR/assisted negotiation, they will initiate the process described in the "ADR Process" section below.
- If they believe that the case is suitable for direct negotiation between the parties, the Chief Administrative Judge may issue an order requesting that the parties attempt to resolve some or all of the issues themselves and report back to him. If direct negotiations are not successful, the parties may request ADR/assisted negotiation in their report to the Chief Administrative Judge. The ADR process will then be initiated.

The Chief Administrative Judge may designate another IBLA Administrative Judge to perform this review function for him.

If the parties successfully negotiate a settlement through either direct negotiation or ADR/assisted negotiation, the appeal will be dismissed. If not, it returns to the normal decision-making process. If portions of the appeal are settled, those portions will be dismissed, and the remaining issues will return to the normal decision-making process. Certain complex cases may move into an advanced case assessment process (described below) before they are directed to an ADR/assisted negotiation process.

- Normal Decision-Making Process

After the appeal has been assigned to a panel of Administrative Judges, they will review the record and the arguments of the parties and will prepare a written order or decision disposing of the appeal. Even if an appeal was not identified as suitable for direct negotiation or ADR/assisted negotiation during the prior review by the Chief Administrative Judge and OHA Dispute Resolution Specialist, the assigned Administrative Judges may determine during their consideration of the case that direct negotiation or ADR/assisted negotiation may be worthwhile. For example, new factual information or new case precedent may become available that would have an impact on the outcome. In that case, the Administrative Judges would consult with the OHA Dispute Resolution Specialist about recommending to the parties that they consider ADR, if doing so would not unduly delay resolution of the appeal.

- ADR Process

The ADR/assisted negotiation process is initiated if and when the Chief Administrative Judge and OHA Dispute Resolution Specialist, or the assigned Administrative Judges, determine that the case should be referred for ADR/assisted negotiation. The OHA Dispute Resolution Specialist will contact the parties, share information with them about ADR/assisted negotiation and IBLA's pilot program, and seek the parties' agreement to proceed with ADR/assisted negotiation. If the parties agree to proceed, the following steps are taken:

- The case is formally suspended on IBLA's docket pending completion of the ADR/assisted negotiation process and is placed on a separate ADR docket.
- The parties select a neutral third party experienced in ADR/assisted negotiation to assist them in reaching an agreement. Working with the neutral, the parties select the ADR/assisted negotiation method they wish to use, participate in any meetings or conference calls scheduled by the neutral, and submit periodic status reports to the OHA Dispute Resolution Specialist.
- The parties retain complete control over the outcome of the ADR/assisted negotiation process; no settlement will be forced upon them. Either they reach a partial or complete settlement agreement or they terminate the process without an agreement. If the parties reach a complete settlement, they will report that fact to the Chief Administrative Judge or the assigned Administrative Judges, who will then dismiss the appeal. If the parties reach a partial settlement, the Chief Administrative Judge or the assigned Administrative Judges will dismiss the settled issues and resolve the remaining issues through the normal decision-making process. If the process is terminated without a settlement, the appeal will return to the normal decision-making process.
- After the ADR/assisted negotiation process has been completed, regardless of the outcome, the parties and neutral will be asked to fill out evaluation forms which will be used by IBLA as part of its pilot program evaluation.

- Advanced Case Assessment

If the Chief Administrative Judge and the OHA Dispute Resolution Specialist think that more information is needed before they can determine whether an appeal is suitable for ADR/assisted negotiation, or the appeal involves complex issues and numerous parties, they may refer the case for Advanced Case Assessment. In the Advanced Case Assessment, the following steps are taken:

- A neutral third party experienced in conducting advanced case assessments will compile detailed information about the appeal and will interview the parties to determine whether ADR/assisted negotiation would be appropriate.
- The neutral will orally advise the parties of his or her assessment as to whether ADR/assisted negotiation would be appropriate, and the parties then decide whether they want to proceed with ADR/assisted negotiation.
- The neutral will provide the Chief Administrative Judge with the parties' decision as to whether or not ADR/assisted negotiation should proceed. If the parties decide not to proceed with ADR/assisted negotiation, the case will be returned to the normal decision-making process. If the parties decide that ADR/assisted negotiation is appropriate, the case will be referred to the ADR/assisted negotiation process described above. Any discussion between the neutral and the Chief Administrative Judge will be limited to non-confidential information.